Successes, concerns and education updates

The Institute has had some wins but is still concerned about a number of government/industry issues, including the merger provisions of the Trade Practices Act.

Demerger legislation a coup for the Institute
The Institute welcomes the enactment of CGT rollover relief for company demergers, which, following strong advocacy by the Institute, became law on 24 October 2002. This important reform, which will have retrospective operation from 1 July 2002, removes a major impediment to conglomerates wishing to restructure their businesses to focus on core competencies.

Bipartisan support for the reform ensured its rapid passage through Parliament and reflected the extensive consultative process undertaken by industry, Treasury and the ATO to thrash out complex legislative details.

New education courses for 2003
Changes in the industry and feedback from various industry sources have led to some significant course changes for 2003.

One of the important drivers for change has been the ASIC-endorsed Financial Services Training Package (FSTP). This training package focuses on both skill and knowledge based competencies and provides the structure for our financial planning and stockbroking qualifications at open-entry level.

We have also introduced Graduate Certificates in both financial planning and applied finance and investment disciplines, which will allow students to build on their degree qualifications and gain a postgraduate qualification earlier. These both build towards their respective Graduate Diplomas.

There will be a faster path to Masters through taking Masters units at Graduate Diploma level.

A new subject has been developed in response to market demand called Global Markets. This subject will compare and contrast the Australian financial markets with those of London, New York and Tokyo.

More details on our new pathways for 2003 are available on our website (www.securities.edu.au).

The inaugural Australasian Investment Management Conference: a great success
The recent Conference, jointly held with the Association for Investment Management & Research (AIMR) and its local affiliated bodies, the Sydney Society of Financial Analysts and the Melbourne Society of Financial Analysts, was highly successful, with excellent feedback from many delegates. Local & international speakers presented on a range of topical issues, and a highlight was a live satellite link to Abby Joseph Cohen (Goldman Sachs) in New York.

We hope to hold further conferences of this calibre in the future.

Pre-merger notification process should be more transparent
The Institute has submitted to the Trade Practices Act Review that the informal process for pre-merger notification lacks transparency and accountability and would benefit from a more commercially realistic approach.

We also advised that the merger authorisation process was rarely used in practice because its lack of any time imperative led to delay and uncertainty.

Frustrating Action versus Diligent Stewardship
The Institute recently commented on the Takeovers Panel Draft Guidance Note on Frustrating Action.

Whilst supporting the Panel’s initiative in providing guidance on
how it views certain defence strategies, we suggested that there is a fine line between action that may be used to frustrate a legitimate bid and the general obligations of a target company’s directors to act in the best interest of the company and its shareholders.

Accordingly, we believe the Panel must be very careful in setting guidelines which may impact on other areas of the law, such as directors’ duties.

Politicians welcome induction program
The Institute’s inaugural Induction Program for politicians received an excellent response at Parliament House in Canberra, with MPs and Senators from the three major parties attending.

The Program, which was presented by Mark Thomas, Regional Director of DFA Australia Limited, and David Rees, Head of Investment Strategy at the Commonwealth Bank, was designed to give emerging politicians an understanding of our industry.

We will consider providing further seminars on specific areas, such as superannuation, mergers and acquisitions, and foreign exchange.

President’s Forum focuses on corporate governance
The September President’s Forum focused on the topical issue of corporate governance.

Attendees from a wide range of backgrounds engaged in healthy debate over how best to create a culture of good corporate governance and whether Australia should continue to support industry-based best practice guidelines or follow the United States approach of adopting black letter law.

There was general consensus that, over time, the voluntary adoption of principle-based best practice guidelines would be more effective in creating a culture of good corporate governance than mandating good corporate behaviour through black letter law.

Corporate Governance Council
The Institute attended the second ASX Corporate Governance Council meeting in September at which we spoke strongly on the issue of analysts’ independence. ASX has issued a Business Rule Guidance Note covering independence of research issues and the Institute has provided detailed comments on a confidential draft. We are concerned that with SEC Rules, industry Best Practice Guidelines, the Guidance Note and a proposed ASIC policy statement all addressing analysts independence issues, the market will be confused and problems may emerge.

A number of working groups have been established to develop best practice corporate governance principles and recommendations. The Institute has a representative on the Integrity of Reporting working group. Other groups have been formed on board composition, competence of directors, remuneration, related party transactions, risk management and codes of ethics, and shareholder participation.

The Council will meet again shortly to consider and discuss progress reports by the working groups.

Expert witnesses
The Institute has been approached by ASIC for advice about the sensitive issue of the preparedness of senior practitioners to act as expert witnesses in Court proceedings. Fellows of the Institute have been contacted to ask if they are prepared for their names to appear on a Register.

We believe that expert witnesses provide an important public service in ensuring a just outcome for both sides in such proceedings.

Cross-border M&A Regulation Forum—Sydney and Melbourne

The Takeovers Panel, in conjunction with the Institute and the University of Sydney and the University of Melbourne Law Schools, offered a unique opportunity for Australian takeovers practitioners to hear and speak to senior regulators from the US SEC, the London Takeover Panel and similar agencies from other countries. Local practitioners increasingly require an international perspective in handling M&A matters.

We encourage Fellows to consider whether they can comply with this request.

ASX enhanced disclosure exposure draft
The Institute made two submissions to ASX on its proposed amendments to the Listing Rules on Enhanced Disclosure. The submissions covered continuous disclosure, electronic lodgement and periodic disclosure as required in Appendix 4B. A more complete report on the submissions can be found on the Policy and submissions page of the Institute’s website.

CLERP 9
We are currently evaluating the practical merits of the 41 reform recommendations proposed in the Government’s Corporate Disclosure (CLERP 9) Issues Paper. We are consulting with our policy committees to develop an appropriate response on those issues most relevant to our members to meet the deadline for submissions.

The Institute welcomes the Government’s principle-based approach to reforming the current continuous disclosure regime aiming for a sensible balance between regulation and co-regulation. In addressing issues related to audits, research analysts, directors and corporate governance, the reform package should encourage improved accountability, disclosure and communication between the board, auditors, intermediaries, shareholders and investors and boost current monitoring, enforcement, deterrence and compliance measures.

We are pleased that many of our comments about the Ramsay Report have been incorporated in the CLERP 9 proposals (including rotation of audit partners, full disclosure of non-audit services provided and mandatory audit committees for top 500 listed companies) and that concerns about the impacts on small companies have been heeded.

We also welcome the Government’s acknowledgement of industry guidance in respect to analysts’ independence.

Continued on page 40
Dolan, Phillip (with Serena Yu). Size matters when it comes to global investing. Spring.


Graham, Phil. Do active managers really outperform? Summer.


Hughes, David. Sustainability risk and the capital markets. Winter.

Hutson, Elaine. Australia’s takeover rules: how good are they? Summer.


Kuo, Richard (with Nick Humphrey). The growing acceptance of backdoor listings. Summer.


Leadaritsis, Peter. Understanding equities research ethics. Summer.


Lumsden, Andrew. Continuous disclosure—outcomes vs enforcement. Spring.


O’Connell, Brendan (with Laurie Webb). The failure of corporate governance. Spring.


Okunev, John (with Lindsay Taylor). Alternatives to sector selection. Winter.


Topp, Garry. Living up to the promise of SRI. Autumn.

Subject to final and formal approval being received, the Institute has approval for these courses to run from the beginning of 2003 until the end of 2007.

To deliver open-entry accredited courses, the Institute is obliged to maintain its status of Registered Training Organisation. A self-assessment report submitted on 30 June 2002, demonstrated how the Institute meets the newly released Australian Quality Training Framework of standards. This having been completed, the Institute is also able to offer the training package qualifications which have been newly introduced for 2003:

- Advanced Diploma of Financial Services (Financial Planning);
- Diploma of Financial Services (Financial Planning); and
- Diploma of Financial Services for Stockbrokers.

The Diploma of Mortgage Lending, along with its Certificate IV version, is in the final stages of reaccreditation by the Vocational Education & Training Accreditation Board (NSW), a decision that will subsequently be recognised by all other jurisdictions, thereby allowing national delivery of these courses for up to three years. The Diploma of Financial Markets is also still awaiting a final decision as this edition goes to press.

Continued from page 23

and look forward to further consultation with ASIC on this matter.

ASIC Australia-wide roadshow
The Institute once again facilitated a nation-wide FSRA Update forum over October and November on the subject of getting an Australian Financial Services Licence. ASIC is keen to encourage the industry to transition early, well before the deadline of 31 March 2004. Participants were able to question ASIC representatives and industry practitioners about the law and the application process.

Accreditation for 2003 and beyond
The Institute’s postgraduate award courses were all reassessed for Australia-wide delivery during August and October by all the relevant state agencies, led by the NSW Department of Education and Training. The overall outcome was positive, with compliments on:

- the strength and professionalism of the application;
- the subject room facility;
- the quality of the learning product and its applied nature; and
- the observation of due process and accreditation procedure.

Continued from page 32

Conclusion
While an IPO remains the favoured route for a public offering for companies with well established profit histories, backdoor listings offer a cost-effective and flexible alternative for smaller companies seeking to go public.

Historically BDLs have been seen as the ‘poor cousin’ of IPOs, however they are gaining acceptance as a viable alternative in the current market environment. Investors generally welcome strong businesses which are seeking a listing and which have been appropriately priced and structured.

From a regulatory process perspective, BDLs can be significantly cheaper and easier to implement than an IPO if a capital raising is not required and/or the shell is in the same industry. Care needs to be taken in selecting the appropriate ‘shell’ to ensure there are no contingent liabilities, that the ‘shell’ is appropriately valued (and the premium can be justified) and the shareholder register provides a suitable foundation going forward.

To help ensure a successful ASX listing, the complex transactional issues and subtle investment community issues must be addressed thoroughly and thoughtfully (see Table 3). Owners of businesses contemplating a backdoor listing need to appoint appropriately experienced corporate, legal and tax advisers to execute these transactions.